(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.56/2002

DB: Hon'ble L.C. Bhadoo,
Hon'ble Sunil Kumar Sinha, J, J

Appellant	Supet Ram, aged about 50 years, s/o Dabel Gond, Occupation Cultivator, R/o village Kokadi, Thana under Masturi, Tah. And Distt. Bilaspur (C.G)
	Versus
RESPONDENT	State of Chhattisgarh, through P.S. Masturi, Bilaspur (C.G)

Appeal under Section 374(2) of the Code of Criminal Procedure

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Appearance:

Shri S.C. Verma, counsel for the petitioner.

Shri Akhil Mishra, counsel for the State.

ORAL JUDGMENT
(22.8.2007)

The following judgment of the Court was delivered by

Sunil Kumar Sinha, J.

Heard.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 31.10.2001 passed by the IV Addl. Sessions Judge, Bilaspur, in Sessions Trial No.465/2000 whereby the appellant has been convicted under section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default of payment of fine, to further undergo R.I. for 6 months.

(2) The case of the prosecution is that the deceased namely Kamlesh, a boy aged about 12 years, used to take his cattle near the fields of accused for grazing. On the fateful day, the deceased alongwith with his friend Rajendra @ Botlu (P.W.1) and Ajay (P.W.9) had gone for grazing their cattle. The allegations are that on account of grazing of crop of accused by the cattle of the deceased, the accused assaulted the deceased with a small iron

rod. These two boys namely Rajendra and Ajay had witnessed the incident. They went to the father of the deceased Bukhelal (P.W.7) and informed him about the incident. Bukhelal gave *merg* intimation Ex.P.14 in Police Chowki, Panchpedi, on which, the First Information Report was lodged in police station Masturi vide Ex.P.13. During the course of investigation, the Investigating Officer gave notice to the *Panch* witnesses under Ex.P.1. The *Panchnama* on the dead body of the deceased was prepared under Ex.P.2. Plain soil & bloodstained soil, an iron rod and one pair of plastic chappals were seized from the place of occurrence under Ex.P.3. The dead body of the deceased was sent for postmortem to Block Medical Office, Masturi under Ex.P.4. The postmortem on the body of the deceased was conducted by Dr.Hemant Dixit (P.W.4) and postmortem report Ex.P.9 was prepared by him. The doctor opined that the cause of death was excessive hemorrhage due to injuries. The Doctor noticed the following injuries.

(i) An incised lacerated wound in size of 3 x ½ x ½ cm on the left ear.

(ii) An incised lacerated wound in size of 2 x ½ x ½ cm on the back side of the left ear.

(iii) An incised lacerated wound on the back side of the ear in size of 5 x 1 ½ x 1 cm on the back side of the ear

(iv) There was swelling on the left mandibular region which was bluish in colour. Its size was 10 x 6 cm. After opening of the said wound, blood was found.

On internal examination, the brain was found healthy, both the lungs were pale, there were small quantity of blood in both the chambers of heart; liver, spleen & Kidneys were pale and urinary bladder was empty. All the injuries were antemortem in nature and were caused by hard and blunt object.

(3) In further investigation the seized articles were sent for chemical examination to the Forensic Science Laboratory, Bilaspur, from where the report Ex.P.8 was received, according to which, the blood stains were found on the sample of soil and clothes of the deceased. The blood stains were also found on the weapon of offence i.e., iron rod sized from the place of occurrence under Ex.P.3. This iron rod was also sent for examination to the

Doctor under Ex.P.10-A, who gave his opinion under Ex.P.10. The site plan was prepared under Ex.P.11.

(4) After completion of usual investigation, the charge sheet was filed before the Judicial Magistrate First Class, who in turn committed the case to the Sessions Judge, Bilaspur, from where the case was received by IV Addl. Sessions Judge, Bilaspur, who conducted the trial and convicted the accused as aforementioned.

(5) The conviction is based on the testimonies of Rajendra (P.W.1) and Ajay (P.W.9) corroborated by F.I.R., testimony of Bukhelal (P.W.7) further corroborated by medical evidence of Dr. Hemant Dixit (P.W.4)

(6) Learned counsel for the appellant has not disputed the homicidal death of the deceased. Moreover, on the evidence of these two witnesses namely Rajendra (P.W.1) & Ajay (P.W.9), it has been established that a quarrel took place between the appellant and the deceased in which the appellant assaulted the deceased with iron rod and the deceased sustained injuries. They had gone to the father of the deceased namely Bukhelal (P.W.7) and on the basis of their information, Bukhelal reported the matter to the police under the F.I.R. (Ex.P.13). Further their evidence is corroborated by the evidence of Dr. Hemant Dixit (P.W.4), who had conducted the postmortem of the deceased and had noticed the injuries as mentioned above. Therefore, it is established that the death of the deceased was homicidal in nature.

(7) As far as the involvement of the accused is concerned, as stated above, there are two eye-witnesses in this case. P.W.1 Rajendra, who is a boy aged about 12 years has deposed that 5 months prior to the date of his deposition, in the afternoon, at about 3 O' clock, he alongwith Ajay and Kamlesh (since deceased) had gone for grazing their Buffaloes near Shivnath river. At the time of grazing, one Buffalo of Kamlesh entered a nearby field of the accused and started grazing the standing crop. On this, the accused started abusing the deceased by hinting his mother and he also said that every day the deceased used to bring his buffaloes towards his field and thereafter by an iron rod, he assaulted him on temporal region, due to which, the deceased fell down. After

that, the appellant had tried to pierce the rod in the ears of the deceased. He deposed that thereafter they ran away towards the village and narrated the story to the father of the deceased. Thereafter the mother and father of the deceased had gone to the place of occurrence. In para 5 of his cross examination, it comes that there was some scuffling between the accused and deceased and they have fell down on the ground, but nothing more could be brought on record to discredit the evidence in entire cross examination of this witness.

(8) Ajay (P.W.9), who was also accompanying the deceased, has deposed that on the fateful day, he alongwith Kamlesh (deceased), and Botlu had gone for grazing their cattle near Shivnath river. The accused appellant came over there and said to Kamlesh, by abusing, that why he brings his cattle towards his field and why he get them entered in his field and at that time, one buffalo of Kamlesh had climbed over the bund of the field of accused appellant. The accused, abusing the deceased, assaulted him with a rod, due to which, the deceased received injuries on his left temporal region. The blood started oozing out of the injuries received by the deceased. He has further deposed that he alongwith other persons ran away from the place of occurrence and informed the matter to the father and the mother of the deceased.

(9) The evidence of P.W.1 & P.W.9 is further supported by the evidence of the father of the deceased namely Bukhelal (P.W.7), who stated that on the fateful day, one hour after taking of the cattle for grazing, Ajay and Botlu came to his house and told him that the deceased had attacked Kamlesh. Thereafter, he went to the place of occurrence and saw that Kamlesh was lying on the ground. He was already dead. There were injuries near the ear of the deceased from where the blood was oozing out. Thereafter, he went to Chowki, Panchpedi and lodged the report. He has proved the report Ex.P.13. In the cross examination, nothing adverse has been brought against this witness as also the two eye witnesses on which their evidence may be disbelieved or discarded. Therefore, the complicity of the accused in crime in question is established by the ocular evidence of two witnesses and the maker of F.I.R.,

supported by the medical evidence of the Doctor, who conducted the postmortem examination.

(10) At this stage, learned counsel for the appellant argues that looking to the genesis of the crime and further looking to the nature of injuries sustained by the deceased as also the weapon of offence used for commission of the crime, it does not appear that the accused was having an intention to cause death of the deceased. His submission is that in the facts and circumstances of this case, the offence committed by the accused shall not travel beyond section 304(part-ii) of I.P.C., and the conviction of the accused-appellant u/s 302 IPC cannot be sustained.

(11) We have considered this argument advanced by learned counsel for the appellant and have also perused the records of the sessions case in this regard.

(12) Admittedly, the quarrel in this matter had taken place on account of entering of the buffalo of the deceased in the field of accused/appellant. It appears that usually when the cattles were brought for grazing on the bank of Shivnath river, they used to enter into the fields of the appellant and on the fateful day also one buffalo of the deceased had climbed over the bund of the agricultural field of the appellant and when the appellant saw that the said buffalo is entering into the field, in resistance and anger he went to the deceased and after some hot exchanges with the deceased he inflicted injuries to him with iron rod. The rod was of 28" in length and the diameter of the rod was 1½", its one end was pointed and perhaps it must be used as a crow bar in agricultural field. Though there are more than one injury on the body of the deceased but according to the postmortem report and evidence of Dr.Hemant Dixit (P.W.4), there was no corresponding fracture to these injuries and the cause of death was excessive hemorrhage from the said injuries. Looking to the size and depth of the injuries and further looking to the back ground of the quarrel, it does not appear to us that in fact the accused/appellant was having intention to cause murder of the deceased as there is no evidence of preparation or pre-meditation for committing such act. However, on the basis of ocular and medical evidence on record, it

can be gathered that the accused was having knowledge that such an act committed by him is likely to cause death or such injury which is likely to cause death of the deceased. Therefore, in our considered opinion, the act committed by the deceased would not travel beyond section 304 (Part II) of I.P.C. and to this extent, the arguments advanced by learned counsel for the appellant appears to be acceptable.

(13) Accordingly, the appeal is partly allowed. The conviction and sentence imposed against the appellant u/s 302 I.P.C. are set aside. Instead thereof, the appellant is convicted u/s 304 (Part-II) IPC and sentenced to undergo imprisonment for 7 years. It is stated that the appellant is in jail since 21.9.2000. For the period undergone, the appellant shall be entitled for the set-off against the sentence imposed upon him.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao